IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 05.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.30014 & 30015 of 2004

M.Munivelu ...Petitioner in W.P.No.30014 of 2004

K.Arumugam ...Petitioner in W.P.No.30015 of 2004

Vs

1.The State of Tamil Nadu,
Rep by the Secretary to Government,
Animal Husbandry and Fisheries
(TAPCO) department,
Secretariat, Chennai - 9.

2.The Chairman and Managing
Director,
Tamil Nadu Poultry Development
Corporation Ltd.,
Nandanam,
Madras - 600 035. ...Respondents in both W.Ps.

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, directing the respondents to provide re-employment to the petitioners as Farm Assistant with all consequential service benefits in the 1st respondent corporation, extending the benefit of the G.O.Ms.No.91 ANIMAL HUSBANDRY AND FISHERIES (TAPCO) DEPARTMENT dated 06.06.2000 and as per order in W.P.No.6702/96 and W.P.No.7796/96 dated 21.04.2003, and on the basis of the representations of the petitioners dated 29.06.2003 and 14.06.2004 respectively.

For Petitioners : Mr.R.D.Ashok Kumar for
Mr.S.N.Ravichandran
in both W.Ps.

For Respondents : Mrs.K.Bhuvaneshwari, AGP
in both W.Ps.

C O M M O N O R D E R

Since the issue involved in both the writ petitions are one and the same, a common order is passed.

2. The petitioners herein were appointed as Farm Assistant in the second respondent Corporation. On 23.03.1995, a voluntary retirement scheme was introduced by the second respondent Corporation and the last date for submitting the application to opt for the scheme was on 07.04.1995. The petitioners herein have opted for the voluntary retirement scheme on 14.04.1995, but subsequently had given a letter of withdrawal on 20.06.1995. Their request for withdrawal, came to be rejected on the ground that there was a bar for withdrawal under the Circular dated 23.03.1995. Accordingly, they were offered with the monetary benefits of the scheme. Aggrieved against the action, the petitioners have filed the writ petitions in W.P.Nos.6702 and 7796 of 1996 and this Court by a letter dated 21.04.2003, had quashed the orders of the respondents, accepting the voluntary retirement. Thereafter, the representations were made by the petitioners. However, the respondents have chosen to pay the benefits of the voluntary retirement scheme, which was also accepted by the petitioners, without prejudice to their rights. However, since the respondents did not absorb the petitioners herein in par with the other employees of the second respondent Corporation, the present Writ petitions have been filed, to extend the benefits of G.O.Ms.No.91 dated 06.06.2000.

3. In the mean time, the second respondent Corporation came to be closed down through G.O.Ms.No.86 dated 19.04.1999 and the 139 employees of the second respondent Corporation were transferred to the first respondent Department through G.O.Ms.No.91 dated 06.06.2000.

4. It is seen that both the petitioners have now attained the age of superannuation.

5. When the petitioners had earlier challenged the second respondent's action of refusing to accept the withdrawal letter of the petitioners, this Court in its order dated 21.04.2003 passed in W.P.Nos.6702 and 7796 of 1996 had quashed the second respondent's orders, accepting the voluntary retirement. In view of this order, the petitioners are deemed to be in service of the second respondent herein. It is in this background that the petitioners had requested the second respondent to provide employment and backwages. However, the Government had issued orders to settle the dues of the petitioners. Such a statement has also been made in the counter affidavit dated 27.01.2005 filed by the respondents herein before this Court.

6. It is claimed by the petitioners herein that they had received the compensation, without prejudice to their lives. When the acceptance of the voluntary retirement itself has been quashed by this Court, I am unable to comprehend as to how the respondents can construe that the petitioners have opted for voluntary retirement and accept the payments made to them. As a matter of fact, such an action of offering voluntary retirement benefits to the petitioners, would be against the orders of this Court. The reasoning given by the respondents in their counter affidavit is that after the orders of this Court dated 21.04.2003, the petitioners' representations for re-employment and backwages were submitted to the Government and the Government have in turn given orders to settle the benefits, as per the orders of the High Court. Such a statement is a misconstruction of the earlier orders of this Court. As such, the petitioners would be entitled to have their services counted from the date on which the second respondent had originally accepted the petitioners representations for voluntary retirement. It is stated that the petitioners' applications for voluntary retirement was accepted by the second respondent on 28.08.1995.

7. The learned counsel for the petitioners submitted that after the second respondent Corporation came to be closed down, the 139 existing employees were transferred to the Animal Husbandry Department through G.O.Ms.No.91 dated 06.06.2000. Had the respondents chosen to abide by the earlier orders of this Court, these petitioners would also have the benefit of G.O.Ms.No.91 dated 06.06.2000. Nevertheless, taking into account that they were not employed from the date of which the voluntary retirement applications were accepted till the date of superannuation, it would not be appropriate to order for backwages. It is needless to point out that since the petitioners have attained the age of superannuation, the question of reinstatement also will not arise. At this juncture, the learned counsel for the petitioners submitted that after their service is counted, they would be entitled for the benefits of pension.

8. In view of the action of the respondents in not abiding by the orders of this Court, it can be deemed that the petitioners were in services till the date of superannuation.

9. For all the foregoing reasons, the respondents herein are directed to count the petitioners' services from 28.08.1995 till the date of superannuation, for the purpose of computing the pensionary benefits and accordingly extend the pension benefits along with the arrears of pension from their respective date of superannuation. Such an exercise shall be completed within a period of 3 months from the date of receipt of copy of this

order. It is made clear that the petitioners shall be entitled for their backwages or reinstatement and that they are entitled only for the pension arrears from the date of superannuation.

10. Accordingly, the Writ Petitions stand allowed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

jas/hvk

To

1.The Secretary to Government,
The State of Tamil Nadu,
Animal Husbandry and Fisheries(TAPCO) department,
Secretariat, Chennai - 9.

2.The Chairman and Managing
Director,
Tamil Nadu Poultry Development Corporation Ltd.,
Nandanam, Madras - 600 035.

+1 cc to The Government Pleader, Sr.No. 34359
+2 cc to Mr.S.N.Ravichandran, Advocate, Sr.No. 33716

W.P.Nos.30014 & 30015 of 2004

CSL/27.06.2019